

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

* * * * *

JOHN PICKART,)	
)	
Appellant,)	
)	
vs.)	OSPI 210-92
)	
DAWSON COUNTY (MONTANA))	
HIGH SCHOOL DISTRICT, by)	<u>DECISION AND ORDER</u>
and through its Board of)	
Trustees,)	
)	
Respondent.)	

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PROCEDURAL HISTORY AND FACTS OF THIS APPEAL

John Pickart is a tenured teacher at Dawson County High School [hereinafter "DCHS"]. He is appealing the July 30, 1992, Order of Dawson County Superintendent of Schools, Jean Grow. Superintendent Grow dismissed Mr. Pickart's appeal of the DCHS Board of Trustees' [hereinafter "the Trustees"] decision not to remove a letter of reprimand from Mr. Pickart's personnel file.

The letter was written by DCHS Superintendent Dan Martin on April 16, 1992, reprimanding Mr. Pickart for leaving a faculty meeting early. On June 3, 1992, Superintendent Martin wrote an amended letter that deleted a reference to possible suspension and added a name to the list of those receiving copies of the letter.

Mr. Pickart filed a grievance to have both letters removed. None of that proceeding is part of the record, but the results must have been unfavorable to Mr. Pickart because he appealed to the Trustees. At their June 16, 1992, regular meeting, the Trustees decided not to remove the letters. On July 15, 1992, Mr. Pickart appealed to the County Superintendent.

The County Superintendent took administrative notice of summary minutes of the Trustees' June 16, 1992, meeting and the 1990-92 collective bargaining agreement [hereinafter "CBA"] negotiated between the Glendive Education Association [hereinafter "GEA"] and the Trustees. Based on these documents she dismissed the appeal without a motion from either party.

The County Superintendent concluded that by the terms of their CBA the Trustees and the GEA had agreed that the Trustees' decisions on grievances were final. Mr. Pickart appealed that decision to this Superintendent.

STANDARD OF REVIEW

The State Superintendent's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704, MCA, and adopted by this Superintendent in ARM 10.6.125. Findings of fact are reviewed under a clearly erroneous standard and conclusions of law are reviewed to determine if the correct standard of law was applied. See, for example, Harris v. Trustees, Cascade County School Districts No.

6 and F. and Nancy Keenan, 786 P.2d 1164, 241 Mont. 274 (1990) and Steer, Inc. v. Dept. of Revenue, 803 P.2d 601, at 603, 245 Mont. 470, at 474 (1990).

The Dawson County Superintendent's decision to dismiss the appeal is a conclusion of law. On review of orders dismissing appeals, this Superintendent uses the standard that motions to dismiss are viewed with disfavor and are considered from the perspective most favorable to the opposing party. Buttrell v. McBride Land and Livestock, 553 P.2d 407, 170 Mont. 296 (1976).

DECISION AND ORDER

The County Superintendent correctly concluded that Mr. Pickart's appeal should be dismissed. The Order is AFFIRMED.

MEMORANDUM OPINION

The County Superintendent did not hold a hearing to review the Trustees' decision about the letter of reprimand. The matter had been grieved and appealed to the DCHS Trustees, who agreed with Superintendent Martin that the letter should stay in the file. The County Superintendent held that by the terms of the parties' CBA, that decision was final.

Mr. Pickart argues that the Dawson County Superintendent has jurisdiction to hear this matter as a school controversy/contested case under §§ 20-3-107 and 20-3-210, MCA. This Superintendent disagrees. The County Superintendent's jurisdiction in this matter comes from the CBA, which she interpreted as precluding further appeal.

This appeal does not present any questions of diminution of a tenured teacher's employment interests. The letter is an isolated disciplinary action. If the DCHS Trustees made an employment decision adversely affecting Mr. Pickart, he would have a right to review of that decision in a hearing before the County Superintendent. All that is at issue now is the Trustees' decision to leave a letter in a file.

The Dawson County Superintendent's jurisdiction to review this trustee decision comes from the terms of the CBA and the holding of Canyon Creek Education Association v. Yellowstone County School District No. 4, 785 P.2d 201, 241 Mont. 73, 9 Ed. Law 4 (1990). The Montana Supreme Court held that a county superintendent could be the initial administrative forum for deciding the meaning of disputed terms of a CBA between trustees and teachers.

The Dawson County Superintendent exercised her jurisdiction to interpret the terms of the CBA and concluded the parties' negotiated grievance procedure made the Trustees' decisions on grievances final. She based this on Article XIII of the CBA, which states in part:

A. Whenever the teacher or the Association feels a situation needs correction, or that a teacher has been treated unfairly, a procedure shall be provided whereby the teacher or the Association can be heard.

D. If the teacher or the Association are dissatisfied with the superintendent's adjudication, within 10 days the grievance shall be presented in writing by the teacher and the Association to the appropriate board of

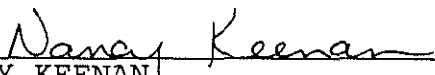
trustees for consideration **and final decision**, to take place at the next regular trustee's meeting, providing no research is necessary to settle the problem. If research is involved, information will be sought, and the grievance will be brought to the attention of the trustees by mail and acted upon at the next regular meeting of the trustees. (Emphasis added.)

Mr. Pickart and the GEA decided that the letter of reprimand was unfair treatment. They pursued the grievance to the Trustees for consideration and final decision. The County Superintendent exercised her jurisdiction over the terms in CBAs to determine this CBA limited the remedy for grievances and there was no appeal. That interpretation of the CBA is reasonable.

CONCLUSION

The County Superintendent correctly dismissed this appeal. She did so without a motion from either party. County superintendents should raise the issue of jurisdiction if they see a reason to question whether the matter can be appealed to them. This Superintendent suggests, however, that before an appeal is dismissed, county superintendents should notify parties that jurisdiction is in question. Parties should have the opportunity to file a legal argument on jurisdiction if they wish or county superintendents can require them to do so.

DATED this 2 day of February, 1994.



NANCY KEENAN

CERTIFICATE OF SERVICE


THIS IS TO CERTIFY that on this 2d day of February, 1994, a true and exact copy of the foregoing Decision and Order was mailed, postage prepaid, to the following:

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